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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/573,423

03/23/2006

Sadao Nishibori

3637-PAT

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08/18/2009

DONN K. HARMS

PATENT & TRADEMARK LAW CENTER

SUITE 100

12702 VIA CORTINA

DEL MAR, CA 92014

EXAMINER

DEMILLE, DANTON D

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

08/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,423	Applicant(s) NISHIBORI ET AL.	
	Examiner Danton DeMille	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/23/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION***Specification***

The abstract of the disclosure is objected to because it is not in one paragraph form. The abstract also recites “To obtain a to obtain a”. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The abstract also recites claim language. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites a resin body with a spring structure that has a layered structure which has “oppositely lengthwise” disposed superficial layers located. It is not clear what is meant by “oppositely lengthwise” is intended to mean. What is it opposite? How is it oppositely lengthwise disposed?

In the last paragraph of claim 1, a speaker is recited as being “oppositely disposed”. It is not clear how a speaker can be oppositely disposed. Does this mean that there are two speakers disposed on opposite sides? It is not clear what other possibility the speaker is disposed. The claim recites the speaker is disposed “on either of the superficial Layers of the resin body with the spring structure” and what? What is the other possible location to satisfy the “either” possibility?

In the last line of claim 1, the spelling of “the spring” needs to be corrected.

Claim 5 does not end with a period.

In claim 6, there is no clear antecedent basis for “the speaker disposed on a rear of a belly of the human body”. The same would apply to “the speaker disposed on a back of a chest of the human body”. It is also not clear what is meant by “outpLit” in the next to last line of the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sleichter, III et al. (US 6,682,494) in view of Haynie (US 4,782,533) and Eakin (US 5,216,769).

Sleichter teaches a cushion having a spring structure comprising a three-dimensional structure including continuous filaments in the form of Nomextm batting fiber 20. The spring structure also has a layered structure including superficial layers of higher bulk density 18 of closed cell foam. The core layer of batting fiber 20 has a lower bulk density. A vibrator 13 is incorporated in the spring structure. There appears to be no unobviousness to the specific materials used for the continuous filaments. Other conventional cushion materials such as thermoplastic resins such as polyethylene terephthalate fibers would have been an obvious equivalent alternative. Haynie teaches a conventional thermoplastic resin Dacrontm as a cushion material. Eakin teaches that speakers are an alternative form of vibration therapy. It would have been obvious to one of ordinary skill in the art to modify Sleichter to use Dacrontm as taught by

Haynie an obvious equivalent alternative continuous filament for the cushion material and to use a speaker as taught by Eakin as an obvious equivalent alternative vibration source.

Regarding claim 2, there is no unobviousness to the specific bulk density of either material. Such is well within the realm of the artisan of ordinary skill dependent on practical consideration of intended use.

Regarding claims 4-7, the specific number and arrangement of speakers is well within the realm of the artisan of ordinary skill in order to maximize the effectiveness of the therapy.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Miller (US 6,263,532).

Hollow thermoplastic resin fibers that are hollow are also well known materials for filling cushions. Miller exemplifies the fact that Dacrontm includes hollow fibers, column 2, lines 33-34. It would have been obvious to one of ordinary skill in the art to further modify Sleichter to use hollow fiber Dacrontm as taught by Miller as the obvious equivalent alternative continuous filament for the cushion material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974.

The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access

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to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

17 August 2009

/Danton DeMille/

Danton DeMille
Primary Examiner
Art Unit 3771